

REMARKS

Claims 1-22, 24-59, 61-78, and 89-92 are pending in this application; claims 1-22, 24-59, 61-73, 76-78, 84, and 87-88 have been withdrawn from consideration. By the Office Action, claims 74, 75, 79, 80, 85, and 86 are rejected under 35 U.S.C. §103, and claims 74, 75, 79, 80, 85, and 86 are rejected on the ground of nonstatutory obviousness-type double patenting. By this Amendment, claims 1, 37, 76, 84, 85 are amended to further clarify the subject matter being claimed, and claims 89-92 have been added. Support for the amendments to claims 1, 37, 76, 84, and 85 may be found, for example, on page 4 (paragraph [0028]) and page 5 (paragraphs [0030] and [0034]) of the present specification. Support for newly added claims 89-92 may be found, for example, on page 11 (paragraph [0069]) of the present specification. Thus, no new matter is added by the above amendments. In view of at least the following, reconsideration and allowance are respectfully requested.

Rejection Under 35 U.S.C. §103

The Office Action rejects claims 74, 75, 79, 80, 85, and 86 under 35 U.S.C. §103(a) as allegedly being unpatentable over Okada (U.S. Patent No. 5,463,009, hereinafter "Okada") and Suzuki et al. (U.S. Patent No. 6,759,052, hereinafter "Suzuki") in view of Yau (U.S. Patent No. 6,109,921, hereinafter "Yau") in further view of Giron et al. (U.S. Patent Application Publication No. 2003/0067545, hereinafter "Giron") and Chapman et al. (U.S. Patent No. 6,121,192, hereinafter "Chapman"). Applicants respectfully traverse the rejection.

Although the Office Action asserts that Okada discloses the claimed coloring agent, Okada merely discloses compositions containing yellow, black, and red iron oxides. In contrast, claims 1, 37, 76, and 85 (from which claims 74, 75, 79, 80, and 86 depend) recite "at least one *organic* coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm." Although Okada generally mentions

organic pigments and dyes, there is nothing in Okada that discloses or suggests the claimed "organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm" (*see* Okada, col. 5, lines 25-49). Furthermore, because the Office Action merely relies upon Suzuki as allegedly disclosing the claimed reflective particles, Suzuki does not cure the aforementioned deficiency of Okada. Yau, Giron, and Chapman are relied upon for other features, and also fail to disclose the claimed coloring agent.

The references thus fail to disclose at least this feature of the claimed invention. Furthermore, the references provide no reason or rationale for one of ordinary skill in the art to have taken the composition of Okada, and substituted the claimed coloring agent for the disclosed iron oxides.

As demonstrated by the data in the attached Declaration, the claimed composition and the claimed method yields unexpected results over prior art compositions, which do not include both the claimed coloring agent and the claimed reflective particles. As shown in the data in the attached Declaration, the claimed composition achieves a remarkable uniform and natural appearance on test subjects with dark skin, unlike the composition of the comparative example that imparts a grey or ashen appearance on the test subject's skin. Similar to Okada, the comparative example discussed in the attached Declaration does not contain the claimed "organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm." Accordingly, Applicants submit that Okada also fails to achieve or appreciate the advantages of the claimed composition, shown in the attached Declaration. Thus, Applicants submit that the claimed composition achieves unexpected results over Okada, which could not have been foreseen based on the teachings of Okada (or any of the other cited publications).

For the reasons set forth above, Applicants submit that Okada, Suzuki, Yau, Giron, and Chapman (either alone or in any proper combination) fail to disclose or to have rendered obvious all of the elements of the claimed invention, as recited in claims 74, 75, 79, 80, 85, and 86.

The cited references thus would not have rendered obvious claims 74, 75, 79, 80, 85, and 86. Reconsideration and withdrawal of the rejection are respectfully requested.

Double Patenting Rejection

The Office Action rejects claims 74, 75, 79, 80, 85, and 86 on the ground of nonstatutory obviousness-type double patenting over claims 32-44 of U.S. Patent Application No. 11/172,977 (hereinafter the '977 application) in view of Okada, Suzuki, Yau, and in further view of Giron and Chapman; and rejects claims 74, 75, 79, 80, 85, and 86 on the ground of nonstatutory obviousness-type double patenting over claims 7 and 39-41 of U.S. Patent No. 6,451,294 (hereinafter the '294 patent) in view of Okada, Suzuki, Yau, and in further view of Giron and Chapman. Applicants respectfully traverse the rejections.

Initially, Applicants note that original claims 32-44 of the '977 application and claims 7 and 39-41 of the '294 patent would not have rendered the claimed invention obvious because these claims do not recite the claimed "organic coloring agent having reflectance with a dominant wavelength of a yellow or orange coloration in a range from 550 to 675 nm;" Applicants further note that claims 32-34 of the '977 application were canceled in an Amendment filed on February 27, 2009. For the reasons discussed above, Okada, Suzuki, Yau, and Giron, and Chapman do not cure the aforementioned deficiencies of the claims of the '977 application and the '294 patent. Applicants also submit that the double patenting rejection is premature, in view of the fact that the scope of the claims of the '977 application may be

significantly modified during the course of prosecution of the present application. For at least these reasons, reconsideration and withdrawal of the rejections are respectfully requested.

New Claims

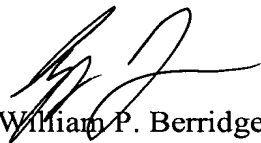
Applicants submit that newly added claims 89-92, which depend from claims 74, 75, 79, and 85, recite allowable subject matter, and respectfully request that the Examiner indicate allowance of newly added claims 89-92.

Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-22, 24-59, 61-78, and 89-92 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,


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Date: April 28, 2009

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